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20 **UNITED STATES DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 ANGELA JOHNSON, on behalf of  
23 herself, and all others similarly situated,

24 Plaintiff,  
25 v.

26 BENNETT LAW, A PROFESSIONAL  
27 LIMITED LIABILITY COMPANY  
28 d/b/a BENNETT LAW, COMPLETE  
PAYMENT RECOVERY SERVICES,  
INC., CERTEGY CHECK SERVICES,  
INC., and FIDELITY NATIONAL  
INFORMATION SERVICES, INC.,

Defendants.

Case No.: 3:12-cv-03043-CAB-RBB

**CLASS ACTION**

**FIRST AMENDED COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF PURSUANT  
TO THE TELEPHONE  
CONSUMER PROTECTION ACT,  
47 U.S.C. §§ 227 *et seq.***

**DEMAND FOR JURY TRIAL**

## 1 INTRODUCTION

2 1. Angela Johnson (“Plaintiff”) brings this Class Action Complaint for  
3 damages, injunctive relief, and any other available legal or equitable remedies,  
4 resulting from the illegal actions of Bennett Law, A Professional Limited Liability  
5 Company d/a/a Bennett Law, Complete Payment Services, Inc., Certegy Check  
6 Services, Inc., and Fidelity National Information Services, Inc. (“Defendants”), in  
7 negligently, and/or willfully contacting Plaintiff through telephone calls on  
8 Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection  
9 Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s privacy.  
10 Plaintiff alleges as follows upon personal knowledge as to his own acts and  
11 experiences, and, as to all other matters, upon information and belief, including  
12 investigation conducted by his attorneys.

## 13 JURISDICTION AND VENUE

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff  
15 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when  
16 aggregated among a proposed class number in the tens of thousands, exceeds the  
17 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a  
18 national class, which will result in at least one class member belonging to different  
19 states than that of the Defendants, providing jurisdiction under 28 U.S.C. Section  
20 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class  
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. This Court has federal question subject matter jurisdiction under 28  
23 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

24 4. Venue is proper in the United States District Court for the Southern  
25 District of California pursuant to 28 U.S.C. § 1391(b) and 1441(a) because  
26 Defendants, at all times herein mentioned, are duly authorized and in good standing  
27 to conduct business in California and do business within this judicial district.

## PARTIES

5. Plaintiff Angela Johnson is, and at all times mentioned herein was, a resident of the State of South Carolina. She is, and at all times mentioned herein was a "person" as defined by 47 U.S.C. § 153 (32).

6. Plaintiff is informed and believes, and thereon alleges, that Defendant Bennett Law PLLC is, and at times mentioned herein was, a professional limited liability company. All of its members are believed to be citizens of the State of Utah with its principal place of business at Suite 200, 10542 South Jordan Gateway, South Jordan, Utah 84095. Defendant is, and at all times mentioned herein was, a corporation and a “person” as defined by 47 U.S.C. § 153 (32). Defendant provides debt collection services and collects on those debts through the use of telephone calls. Plaintiff alleges that at all times relevant herein Defendant Bennett Law PLLC conducted business in the State of California and in the County of San Diego, and within this judicial district.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant Complete Payment Recovery Services, Inc., is a Georgia corporation licensed to do business in California with its principal office located at 11601 Roosevelt Boulevard, North St. Petersburg Florida 33176. Defendant is, and at all times mentioned herein was, a corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges that at all times relevant herein Defendant, a corporation who functions as a debt collector, is duly authorized and in good standing to conduct business in California and does business within this judicial district. Plaintiff alleges that at all times relevant herein Defendant Complete Payment Recovery Services, Inc. conducted business in the State of California and in the County of San Diego, and within this judicial district.

8. Plaintiff is informed and believes, and thereon alleges, that Defendant Certegy Check Services, Inc., is a Delaware corporation licensed to do business in

1 California with its principal office located at 11601 Roosevelt Boulevard, North St.  
2 Petersburg Florida 33176. Defendant is, and at all times mentioned herein was, a  
3 corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges  
4 that at all times relevant herein Defendant Certegy Check Services, Inc. conducted  
5 business in the State of California and in the County of San Diego, and within this  
6 judicial district.

7 9. Plaintiff is informed and believes, and thereon alleges, that Defendant  
8 Fidelity National Information Services, Inc. is a Georgia corporation licensed to do  
9 business in California with its principal office located at 601 Riverside Avenue,  
10 Jacksonville Florida 32204. Defendant is, and at all times mentioned herein was, a  
11 corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges that  
12 at all times relevant herein Defendant Fidelity National Information Services, Inc.  
13 conducted business in the State of California and in the County of San Diego, and  
14 within this judicial district.

15 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**  
16 **(TCPA), 47 U.S.C. §§ 227 *et seq.***

17 10. In 1991, Congress enacted the Telephone Consumer Protection Act, 47  
18 U.S.C. § 227 (TCPA),<sup>1</sup> in response to a growing number of consumer complaints  
19 regarding certain telemarketing practices.

20 11. The TCPA regulates, among other things, the use of automated  
21 telephone equipment, or “autodialers.” Specifically, the plain language of section  
22 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless  
23 number in the absence of an emergency or the prior express consent of the called  
24 party.<sup>2</sup>

25  
26 <sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394  
27 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the  
Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

12. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.<sup>3</sup>

## **FACTUAL ALLEGATIONS**

13. Plaintiff's husband Michael Jones signed a contact with Home Depot Home Services for Home Depot Home Services to perform work on his home on or about September 27, 2011. In that application, Plaintiff's husband Michael Jones provided his cell phone number.

14. Commencing in or around March of 2012, Plaintiff began receiving unsolicited phone calls to her cellular telephone number regarding her husband's alleged debt to Home Depot Home Services from Defendants.

15. Plaintiff believes she was initially contacted from Defendants Complete Payment Recovery Services, Certegy Check Services, Inc. and/or Fidelity National Information Services, Inc.

16. Plaintiff believes the account was later transferred to Defendant Bennett Law PLLC in or around September of 2012.

17. These unsolicited phone calls placed to Plaintiff's wireless telephone were placed via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) and by using "an artificial or prerecorded voice" system as

<sup>2</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

1 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store  
2 numbers randomly or sequentially, and to dial such numbers, to place telephone calls  
3 to Plaintiff's cellular telephone.

4       18.     The telephone number that Defendants, or its agents, called was  
5 assigned to a cellular telephone service for which Plaintiff incurred a charge for  
6 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

7       19.     These telephone calls constitute calls that were not for emergency  
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

9       20.     Plaintiff did not provide Defendants or its agents prior express consent  
10 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

11       21.     These telephone calls by Defendants or its agents therefore violated 47  
12 U.S.C. § 227(b)(1).

13       22.     Under the TCPA and pursuant to the FCC's January 2008 Declaratory  
14 Ruling, the burden is on Defendants to demonstrate that Plaintiff provided express  
15 consent within the meaning of the statute.

### 16                   **CLASS ACTION ALLEGATIONS**

17       23.     Plaintiff brings this action on behalf of herself and on behalf of and all  
18 others similarly situated ("the Class").

19       24.     Plaintiff represents, and is a member of the Class, consisting of all  
20 persons within the United States who received any unsolicited telephone calls from  
21 Defendants or its agents on their paging service, cellular phone service, mobile radio  
22 service, radio common carrier service, or other service for which they were charged  
23 for the call, through the use of any automatic telephone dialing system or artificial  
24 or pre-recorded voice system as set forth in 47 U.S.C. § 227(b)(1)(A)(3) or artificial  
25 or prerecorded voice, which telephone calls by Defendants or its agents were not  
26 made for emergency purposes or with the recipients' prior express consent, within  
27 four years prior to the filing of this Complaint.

28

1 25. Defendants and its employees or agents are excluded from the Class.  
2 Plaintiff does not know the number of members in the Class, but believes the Class  
3 members number in the hundreds of thousands, if not more. Thus, this matter should  
4 be certified as a Class action to assist in the expeditious litigation of this matter.

5 26. Plaintiff and members of the Class were harmed by the acts of  
6 Defendants in at least the following ways: Defendants, either directly or through its  
7 agents, illegally contacted Plaintiff and the Class members via their cellular  
8 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the  
9 Class members to incur certain cellular telephone charges or reduce cellular  
10 telephone time for which Plaintiff and the Class members previously paid, and  
11 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class  
12 members were damaged thereby.

13 27. This suit seeks only damages and injunctive relief for recovery of  
14 economic injury on behalf of the Class and it expressly is not intended to request  
15 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
16 right to expand the Class definition to seek recovery on behalf of additional persons  
17 as warranted as facts are learned in further investigation and discovery.

18 28. The joinder of the Class members is impractical and the disposition of  
19 their claims in the Class action will provide substantial benefits both to the parties  
20 and to the Court. The Class can be identified through Defendants' records or  
21 Defendants' agents' records.

22 29. There is a well-defined community of interest in the questions of law  
23 and fact involved affecting the parties to be represented. The questions of law and  
24 fact to the Class predominate over questions which may affect individual Class  
25 members, including the following:

26 a. Whether, within the four years prior to the filing of this Complaint,  
27 Defendants or its agents placed telephone calls without the recipients'  
28

1 prior express consent (other than a telephone call made for  
2 emergency purposes or made with the prior express consent of the  
3 called party) to a Class member using any automatic telephone dialing  
4 system or an artificial or pre-recorded voice system, to any telephone  
5 number assigned to a cellular telephone service;

6 b. Whether Plaintiff and the Class members were damaged thereby, and  
7 the extent of damages for such violation; and  
8 c. Whether Defendants and its agents should be enjoined from engaging  
9 in such conduct in the future.

10 30. As a person that received at least one unsolicited telephone call to her  
11 cell phone without Plaintiff's prior express contest, Plaintiff is asserting claims that  
12 are typical of the Class. Plaintiff will fairly and adequately represent and protect the  
13 interests of the Class in that Plaintiff has no interest antagonistic to any member of  
14 the Class.

15 31. Plaintiff and the members of the Class have all suffered irreparable  
16 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class  
17 action, the Class will continue to face the potential for irreparable harm. In addition,  
18 these violations of law will be allowed to proceed without remedy and Defendants  
19 will likely continue such illegal conduct. Because of the size of the individual Class  
20 member's claims, few, if any, Class members could afford to individually seek legal  
21 redress for the wrongs complained of herein.

22 32. Plaintiff has retained counsel experienced in handling class action  
23 claims and claims involving violations of the Telephone Consumer Protection Act.

24 33. A class action is a superior method for the fair and efficient adjudication  
25 of this controversy. Class-wide damages are essential to induce Defendants to  
26 comply with federal law. The interest of Class members in individually controlling  
27 the prosecution of separate claims against Defendants is small because the maximum  
28

statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

34. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

## **FIRST CAUSE OF ACTION**

## NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. §§ 227 *ET SEQ.*

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. Each such telephone class was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendants were able to effectively make thousands of phone calls simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention. These telephone calls were made without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

37. The foregoing acts and omissions of Defendants and its agents constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

38. As a result of Defendants', and Defendants' agents', negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

39. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**  
**KNOWING AND/OR WILLFUL VIOLATIONS OF THE**  
**TELEPHONE CONSUMER PROTECTION ACT**  
**47 U.S.C. §§ 227 *ET SEQ.***

40. Plaintiff incorporates by reference the above paragraphs 1 through 34 inclusive, of this Complaint as though fully stated herein.

9       41.     Each such telephone class was made using equipment that, upon  
10 information and belief, had the capacity to store or produce telephone numbers to be  
11 called, using a random or sequential number generator, and to dial such numbers.  
12 By using such equipment, Defendants were able to effectively make thousands of  
13 phone calls simultaneously to lists of thousands of wireless phone numbers of  
14 consumers without human intervention. These telephone calls were made without  
15 the prior express consent of the Plaintiff and other members of the Class to receive  
16 such telephone calls.

17       42.       The foregoing acts and omissions of Defendants constitute numerous  
18 and multiple knowing and/or willful violations of the TCPA, including but not  
19 limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227 *et*  
20 *seq.*

21       43.       As a result of Defendants' knowing and/or willful violations of 47  
22 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as  
23 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47  
24 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

25       44. Plaintiff and the Class are also entitled to and seek injunctive relief  
26 prohibiting such conduct in the future.

## PRAYER FOR RELIEF

**Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the Class members the following relief against Defendants:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

45. As a result of Defendants', and Defendants' agents', negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

46. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

47. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL  
VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

48. As a result of Defendants', and Defendants' agents', willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

49. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

50. Any other relief the Court may deem just and proper.

## JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: September 16, 2013 /s/ *Ronald A. Marron*

By: Ronald A. Marron

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